

**DEPARTMENT OF PARKS AND RECREATION
OFF-HIGHWAY MOTOR VEHICLE RECREATION DIVISION
GRANTS AND COOPERATIVE AGREEMENTS PROGRAM REGULATIONS**

INITIAL STATEMENT OF REASONS

INTRODUCTION

Public Resources Code Section 5090.01 et seq., also known as the Off-Highway Motor Vehicle Recreation Act of 2003 (Act), as amended, governs off-highway motor vehicle grants and cooperative agreements with cities, counties, districts, federal agencies, federally recognized Native American tribes, nonprofit organizations, educational institutions, and State agencies. The Grants and Cooperative Agreements Program (Program) is administered by the Off-Highway Motor Vehicle Recreation (OHMVR) Division within the Department of Parks and Recreation (Department). The Program allows the State to assist eligible agencies and organizations to develop, maintain, expand and manage high-quality off-highway vehicle (OHV) recreation areas, roads, trails, and other facilities, while responsibly maintaining the wildlife, soils, and habitat in a manner that will sustain long-term OHV recreation. Assistance is provided in the form of project-specific grant funding.

The Department adopted permanent regulations for the Grants and Cooperative Agreements Program, which appear in the California Code of Regulations, Title 14, Division 3, Chapter 15, Sections 4970.00 – 4970.26. These regulations apply to grant and cooperative agreement applications received by the OHMVR Division on or after January 1, 2008. Under the approved regulations, grant funding may be applied for using a two-step application submission process. This process ensures public review and comment, allows for preliminary review by the OHMVR Division, and provides the opportunity for applicants to submit better, more competitive final applications. The OHMVR Division requires application submission using the On-Line Grant Application (OLGA) database, a web-based system that allows applicants to develop and submit their application via the internet. After scoring the applications, successful applicants enter into binding project agreements.

Minor revisions were made to the regulations following the completion of the 2008/09 and 2009/2010 grant cycles, primarily to correct small issues identified during each funding cycle under the new the Program regulations.

With the conclusion of the 2010/11 grants cycle, the OHMVR Division identified areas in the regulations needing additional clarity or revision. As a result, the Department proposes to amend portions of CCR Title 14, Division 3, Chapter 15, Sections 4970.00 – 4970.26 and documents incorporated by reference. These amendments will clarify aspects of the Program, improve oversight, and revise

project evaluation criteria to obtain more effective and relevant information for scoring the projects.

MANDATES FOR SPECIFIC ACTIONS OR PROCEDURES OR SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed amendments do not impose any mandates on agencies or organizations. Participation in the Program is voluntary.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Department did not rely upon any other technical, theoretical, or empirical studies, reports, or documents other than those incorporated by reference in proposing these amendments.

UNNECESSARY DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

The Department has determined that the proposed rulemaking action does not unnecessarily duplicate or conflict with federal regulations contained in the Code of Federal Regulations. Participation in the Program is voluntary and is not addressed in the Federal Code of Regulations.

SPECIFIC PURPOSE AND NECESSITY FOR EACH PROPOSED AMENDMENT OF THE REGULATIONS

The following provides the specific purpose and necessity for each proposed amendment to sections in CCR Title 14, Division 3, Chapter 15, § 4970.00 – 4970.26.

4970.00 – APPLICATION OF CHAPTER

Specific Purpose

Section 4970.00 is amended to refer to the date of the current regulation revisions.

Necessity

The amendment to Section 4970.00 is necessary to ensure applicants are using the most up-to-date version of the program regulations.

4970.01 – DEFINITIONS

Specific Purpose

Section 4970.01 is amended to add a defined term. The section is also relettered to maintain alphabetical order.

Necessity

The amendment to Section 4970.01 is necessary to define the term “Medicals”, which appears in the Education and Safety Criteria (Rev. 12/11). Relettering is necessary to maintain alphabetical order.

4970.03 – DETERMINING APPLICANT ELIGIBILITY**Specific Purpose**

Section 4970.03 is amended to correct grammar.

Necessity

The amendment to Section 4970.10.3(a)(3) is necessary to improve grammar and readability by inserting the word “or”. This change is not substantial and does not materially alter the content of the regulations.

4970.04 – GRANTS PROGRAM CYCLE**Specific Purpose**

Table 2 is amended to identify the deadline for submitting an application.

Necessity

The amendment to Table 2 is necessary to ensure applicants are aware of the deadline for submitting an application. Previously, applications were accepted until 11:59 pm. In an effort to minimize overtime by Division staff, the deadline is being moved to 5:00 pm.

4970.05 – GENERAL APPLICATION REQUIREMENTS**Specific Purpose**

Section 4970.05 is amended to ensure consistency between the regulations and a document incorporated by reference regarding public notification efforts. The Section is also amended to specify acceptable documentation required of educational institutions and nonprofit organizations.

Necessity

The amendment to Section 4970.05(e)(2) is necessary to ensure applicants are clearly informed about acceptable public notice efforts required under the program. Currently this regulation Section and the document incorporated by reference, Public Review Process, provide different alternatives to fulfill the public notification requirement. The revision will eliminate confusion caused by the conflicting directions.

The amendment to Section 4970.05(l) is necessary to provide clear direction to educational institutions and nonprofit organizations when providing written permission from the land managers with which they are working. Changing the language from agreement to permission is consistent with PRC 5090.50(f)(2). In

prior grants cycles applicants provided a wide variety of documents to show approval from the land managers. The amended language now identifies acceptable criteria for written permission.

4970.06.1 – California Environmental Quality Act (CEQA) Requirements

Specific Purpose

Section 4970.06.1 is amended to ensure consistency in this Section. The Section is also amended to remove unnecessary capitalization. Lastly, the Section is amended to explain what environmental compliance documentation may be submitted by applicants subject to the National Environmental Policy Act (NEPA) and when it must be submitted.

Necessity

The amendment to Section 4970.06.1(b) is necessary to consistently use the phrase “and/or” throughout the Section. Use of this phrase recognizes that applicants may be subject to both CEQA or NEPA.

The amendment to Section 4970.06.1(d) is necessary to remove capitalization from “federal agencies”, an undefined term.

The amendment to Section 4970.06.1(d)(1) is necessary to inform those applicants subject to NEPA that a completed NEPA compliance document is not required at the time of application, but the compliance document must be completed prior to funding other project activities. The OHMVR Division is required to comply with CEQA and past experience has shown, in some instances, the OHMVR Division could make a CEQA determination based on data available from an ongoing NEPA analysis or from relevant portions of a larger scoped document. This regulation will ensure the completed NEPA document is provided prior to funding subsequent project-related activities.

4970.07 - APPLICATION SUBMISSION

Specific Purpose

Section 4970.07 is amended to clarify the purpose of comments submitted by OHMVR Division to applicants.

Necessity

The amendment of Section 4970.07(d) is necessary so applicants that receive comments from the OHMVR Division regarding an application do not erroneously assume the application is compliant with the regulations and/or assured to be successful.

4970.07.2 - Final Application Defects

Specific Purpose

Section 4970.07.2 is amended to clarify the ability of the OHMVR Division to eliminate or reduce costs or activities in applications.

Necessity

The amendment of Section 4970.07.2(f) is necessary to further specify the conditions in which the OHMVR Division will eliminate requested funds or activities from an application. The intent of the OHMVR Division to fund only eligible items remains unchanged; however, some applicants were confused when specific items were removed from the application by the OHMVR Division. The revised language now makes clear that the OHMVR Division will not award funds for specific items or activities that are not compliant with the regulations or when the OHMVR Division cannot determine if specific items or activities are compliant with the regulations.

4970.08 – ELIGIBLE PROJECT COSTS**Specific Purpose**

Section 4970.08 is amended to expand the list of media items considered as eligible project costs. The amendment also places restrictions if these items intend to display the OHV trust fund logo.

Necessity

The amendment to Section 4970.08(b)(11) is necessary to accommodate the modern variety of media for which applicants have sought funding. Given the wide distribution of media being funded through the program, the OHMVR Division finds it necessary to review any media that will display the OHV trust fund logo in order to ensure the message being delivered is accurate and compliant with existing statutes.

4970.10.1 – Ground Operations**4970.10.2 – Development****4970.10.3 – Planning****4970.10.4 – Acquisition****4970.11 – RESTORATION****4970.13 – EDUCATION AND SAFETY****Specific Purpose**

The above Sections are amended to reduce possible confusion and ensure consistency throughout the regulations.

Necessity

The amendment to Sections 4970.10.1(d)(1), 4970.10.2(d)(1), 4970.10.3(d), 4970.10.4(d)(1), 4970.11(f)(1), and 4970.13(f) is necessary to replace the undefined term “agency” with the defined term “Applicant”.

4970.11 – RESTORATION

Specific Purpose

Section 4970.11 is amended to identify additional information needed for restoration project applications.

Necessity

The amendment to Section 4970.11(f)(1)(H) is necessary to inform applicants with restoration projects they will be required to describe erosion control efforts related to the project. With the addition of the Soil Conservation Plan form to the appendix, some applicants may not otherwise provide information relative to erosion control measures on restoration projects. The inclusion of this information will help the OHMVR Division determine CEQA compliance for the project.

4970.19 – PROJECT AGREEMENT

Specific Purpose

Section 4970.19 is amended to ensure the OHVMR Division does not execute project agreements for applicants that owe the State money from previous projects or applicants that have not closed out existing projects in a timely manner.

Necessity

The amendment to Section 4970.19 is necessary to promote prompt repayment and timely close out of projects.

4970.19.1 – Project Performance Period

Specific Purpose

Section 4970.19.1 is amended to specify the timeframe in which a project performance period can begin.

Necessity

The amendment to Section 4970.19.1 is necessary to provide explicit direction to applicants regarding project start dates. The OHMVR Division allows flexibility regarding start dates, but during prior grant cycles a trend has been noted from applicants seeking later start dates. Given that program funds revert five years after they are apportioned and it is approximately one year after apportionment before they are awarded, the OHMVR Division finds it necessary and practical to require applicants start no later than the following January 1. Additional time is allowed for projects requiring more time for completing CEQA.

4970.23.1 – Advances

Specific Purpose

Section 4970.23.1 is amended to require additional information from grantees when requesting advance payments.

Necessity

The amendment to Section 4970.23.1(a) is necessary to provide the OHMVR Division a level of comfort that the applicant is ready to start the project when requesting the first funding advance. Minimally, geographic and photographic information about the proposed project areas will indicate the project locations have been identified. The amendment to Section 4970.23.1(b) requires not only geographic and photographic information about the project areas, but a statement of activities and accomplishments when requesting subsequent funding advances. This data will demonstrate how the previously advanced funds have been put to use and may allow the OHMVR Division to identify any issues prior to the end of the project. The geographic information will also allow the OHMVR Division to create a comprehensive Geographic Information System (GIS) database and compile project information in a useful format.

4970.23.2 – Reimbursements**Specific Purpose**

Section 4970.23.1 is amended to require additional information from grantees when requesting reimbursement.

Necessity

The amendment to Section 4970.23.2 is necessary to provide the OHMVR Division a level of comfort that the applicant is appropriately spending the grant funds. The statement of activities/accomplishments and geographic and photographic information, in addition to other required documentation, will demonstrate the funds are being used in accordance with the project agreement and may allow the OHMVR Division to identify any issues prior to the end of the project. The geographic information will also allow the OHMVR Division to create a comprehensive GIS database and compile project information in a useful format.

4970.24 – PROJECT CLOSEOUT**Specific Purpose**

Section 4970.24 is amended to subdivide this Section. Newly numbered Section 4970.24.1 is amended to require additional information from grantees closing out a project.

Necessity

The amendment to Section 4970.24 is necessary to obtain cost-effective documentation of purchases and project completion. Consistent with the Governor's directive to minimize travel, requiring photographic evidence when

closing out a project may preclude unnecessary travel on the part OHMVR Division staff.

4970.24.2 – Project Performance Review

Specific Purpose

Section 4970.24.2 is added to explain a project review conducted by OHMVR Division staff.

Necessity

The addition of Section 4970.24.2 is necessary to reorganize the regulations and to explain the role and scope of the project review conducted by OHMVR Division staff. This new section specifies the project performance review is a typical duty of the grant administrator and details the extent and methods of a project performance review.

Subarticle 1. – AUDITS

Specific Purpose

Subarticle 1 is amended to reduce confusion about audits and remove unnecessary language that has been moved to new sections in the regulations.

Necessity

The deletion of Section 4970.25.1 is necessary to clarify the difference between a performance review and a project audit. In order to release final payment, the OHMVR Division must be confident the project has been completed, or if not, the failure to complete must be adequately explained. Since this is a role of the grant administrator, it is practical to delete this section and move it to the more appropriate Section 4970.24.2 Project Performance Review. Deleting this section does not preclude a financial audit of the project in the future.

4970.25.2 – Financial Audits

Specific Purpose

Section 4970.25.2 is amended to reduce confusion about audits, remove unnecessary language, describe interaction between the OHMVR Division and the Audits Office, and maintain correct numbering.

Necessity

The amendment to Section 4970.25.2(a) is necessary to remove confusing language about project-specific audits. Section 4970.25.2(a) formerly restated PRC 5090.50(h) which includes language pertaining to an audit of the overall Program, as well as language specific to the audits of individual grants administered by the Program. The reference to the audit of the Program is deleted as this statutory requirement is in force, but is not relevant to these regulations.

The amendment to Section 4970.25.2(d) is necessary to indicate the Audits Office and OHMVR Division will work cooperatively to ensure the projects are completed. Renumbering Section 4970.25.2 is necessary due to the deletion of Section 4970.25.1.

4970.25.3 – Final Audit Report

Specific Purpose

Section 4970.25.3 is amended to maintain correct numbering.

Necessity

The amendment to Section 4970.25.3 is necessary due to the deletion of Section 4970.25.1.

SPECIFIC PURPOSE AND NECESSITY FOR EACH PROPOSED AMENDMENT TO DOCUMENTS INCORPORATED BY REFERENCE INTO THE REGULATIONS

The following provides the specific purpose and necessity for each proposed amendment to documents incorporated by reference.

PUBLIC REVIEW PROCESS

Specific Purpose

PUBLIC REVIEW PROCESS is amended to be consistent with the regulations.

Necessity

The amendment is necessary for a selection under PUBLIC NOTIFICATION EFFORTS to correspond with the language contained in Section 4970.05(e)(2).

SOIL CONSERVATION PLAN (12/11)

Specific Purpose

The Soil Conservation Plan form is added to identify projects that must supply a Soil Conservation Plan.

Necessity

The addition of the Soil Conservation Plan form is necessary to readily identify situations where a Soil Conservation Plan is applicable and to avoid unnecessary work on the part of applicants when a Soil Conservation Plan is not applicable. Currently, any project with ground disturbing activities is required to submit a Soil Conservation Plan. However, the Soil Conservation Plan is designed to address erosion, sedimentation and soil loss in areas open to legal OHV recreation. Previously, there have been situations where a restoration project has been proposed by an applicant in an area with no legal OHV recreation. In some cases

the applicant is a nonprofit that does not provide OHV recreation. With amendments to 4970.11(f)(1)(H), applicants with restoration projects must describe erosion control efforts related to the projects.

Applicants with projects in areas open to legal OHV recreation that have ground disturbing activities with the potential to cause erosion or sedimentation which significantly affects resource values beyond the facilities or generate soil loss that exceeds restorability must provide a Soil Conservation Plan.

EVALUATION CRITERIA – General Criteria (Rev. 1/11)

Specific Purpose

Evaluation Criteria – General Criteria (Rev. 1/11) is amended to revise specific evaluation criteria in order to obtain more effective and relevant information about the applicants.

Necessity

The amendment to Item 5 is necessary to account for all potential scenarios an applicant may encounter when answering this question. Currently, an applicant that has active grants that have not reached the end of their performance period could not answer this question accurately.

The addition of Item 14 is necessary to allow applicants to identify measures taken by the applicant or land manager to sustain OHV recreation, even if the applicant or land manager do not currently maintain OHV facilities. Previously, applicants with no OHV program or applicants working with a land manager that does not have an OHV program were unable to answer most questions in the General Criteria. As a result, these applicants scored very low in the General Criteria and their overall project scores suffered, putting them at or near the bottom of the project rankings. This was especially apparent in applications for restoration and planning grants. However, this revision recognizes an applicant that does not have OHV facilities may still support OHV recreation in other ways and awards points accordingly.

EVALUATION CRITERIA – Education and Safety Criteria (Rev. 1/11)

Specific Purpose

Evaluation Criteria – Education and Safety Criteria (Rev. 1/11) is amended to revise specific project evaluation criteria in order to obtain more effective and relevant information when scoring the projects.

Necessity

The amendment to Item 2 is necessary to account for all potential scenarios an applicant may encounter when answering this question. Currently, an applicant that has active grants that have not reached the end of their performance period could not answer this question accurately.

The amendment to Item 9 is necessary to effectively assess an educational project. The average time of exposure to the project message is a more useful description than the total time of exposure. The applicant also has the opportunity to explain the response.

The amendment to Item 10 is necessary to revise and update educational methods that may be used in a project.

The amendment to Item 12 is necessary to effectively evaluate the overall level of training for an applicant applying for a safety project.

The amendment to Item 13 is necessary to replace an ineffective evaluation criterion. The proposed question measures the staffing structure of the applicants.

The amendment to Item 15 is necessary to replace an ineffective evaluation criterion. The question previously failed to separate applicants as the responses applied almost universally. The proposed question measures the annual activity level of the applicants.

EVALUATION CRITERIA – Restoration Project Criteria (Rev. 1/11)

Specific Purpose

Evaluation Criteria – Restoration Project Criteria (Rev. 1/11) is amended to revise specific project evaluation criteria in order to obtain more effective and relevant information when scoring the projects.

Necessity

The amendment to Item 2 is necessary to address all potential scenarios an applicant may encounter when answering this question. Currently, an applicant applying for a restoration planning grant could not answer this question accurately.

The amendment to Item 4 is necessary to address all potential scenarios an applicant may encounter when answering this question. Currently, an applicant applying for a restoration planning grant could not answer this question accurately. The points awarded for each answer are now identified within the question.

The amendment to Item 6 is necessary to allow applicants to explain their response. In many instances, it was not possible for an applicant to identify a single reference document as requested.

The amendment to Item 9 is necessary to specify this question applies only to applicants seeking funding for a scientific or cultural study. Previously, many applicants have answered this question unnecessarily.

The amendment to Item 10 is necessary to reduce confusion about the intent of the question. The revised question specifies that the underlying issue has been resolved prior to implementation of the project. Without the revision, applicants frequently describe how the underlying problem will be resolved by the implementation of the project.

The amendment to Item 11 is necessary to clearly indicate what needs to be identified in the response. The revised wording clearly indicates only the sensitive habitat addressed by the project should be used to determine the response.